United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

391

334

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22420

THOMAS B. CROSS,

Appellant,

v.

DAVID W. HARRIS,
ACTING SUPERINTENDENT,
SAINT ELIZABETHS HOSPITAL,

Appellee.

APPEAL FROM AN ORDER OF THE
UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA DISCHARGING A
WRIT OF HABEAS CORPUS

United States Court of Appeals
for the District of Columbia Circuit

FILED DEC 10 1968

Nathan J. Paulson
CLERK

Edwin A. Williams
Legal Aid Agency
601 Indiana Avenue, N. W.
Washington, D. C. 20004
Counsel for Appellant
[Appointed by this Court]

TABLE OF CONTENTS

	Page
TABLE OF CASES	ii
STATUTES AND OTHER AUTHORITIES	iii
STATEMENT OF THE ISSUE	2
STATEMENT OF THE CASE	3
SUMMARY OF THE ARGUMENT	5
ARGUMENT:	
I. PROCEEDINGS UNDER THE SEXUAL PSYCHOPATH LAW ARE ESSENTIALLY EQUIVALENT TO CIVIL COMMITMENT PROCEEDINGS	6
II. SINCE ALTERNATIVE COURSES OF TREATMENT MUST BE EXPLORED IN CIVIL COMMITMENT PROCEEDINGS, IT MAY NOT BE ASSUMED THAT CONGRESS INTENDED TO WITHHOLD SUCH CONSIDERATION FROM PERSONS COMMITTED AS "SEXUAL PSYCHOPATHS"	9
III. APPELLANT WAS DENIED EQUAL PROTECTION OF THE LAWS BY THE COURT'S FAILURE TO EXPLORE ALTERNATIVE COURSES OF TREATMENT BEFORE COMMITTING HIM TO SAINT ELIZABETHS HOSPITAL	10
CONCLUSION	12
ADDENDUM	14, 15

TABLE OF CASES

	Page
Baxstrom v. Herold, 383 U.S. 107 (1966).....	5, 11
Cameron v. Muller, 123 U.S. App. D.C. 235, 387 F.2d 193 (1967).....	5, 11
*Fuller v. United States, ___ U.S. App. D.C. ___, 390 F.2d 468 (1967.....	5, 7, 11, 12
*Lake v. Cameron, 124 U.S. App. D.C. 264, 364 F.2d 657 (1966).....	6, 9, 10
*Millard v. Cameron, 125 U.S. App. D.C. 383, 373 F.2d 468 (1966).....	5, 8, 10
Miller v. Overholser, 92 U.S. App. D.C. 110, 206 F.2d 415 (1953).....	5, 8
Rouse v. Cameron, 125 U.S. App. D.C. 366, 373 F.2d 451 (1967).....	5, 11

---

*Authorities chiefly relied upon.

STATUTES AND OTHER AUTHORITIES

Page(s)

STATUTES:

D.C. Code § 21-545(b) 6, 7

D.C. Code § 22-3503(1) 3, 6, 7, 8

D.C. Code § 22-3508 ..... 2, 3, 5, 10, 12

OTHER AUTHORITIES:

S. Rep. No. 1377, 80th Cong., 2d Sess. (1948) 7

STATEMENT OF THE ISSUE

The issue is whether it is a denial of equal protection of the laws to commit a person to Saint Elizabeths Hospital as a "sexual psychopath" under D.C. Code § 22-3503 (1967) without first exploring alternative courses of treatment.

This case has not been before this Court previously.

STATEMENT OF THE CASE

This case arises from the failure of a District of Columbia Court of General Sessions judge to explore and exhaust alternative courses of treatment before committing appellant to Saint Elizabeths Hospital pursuant to D.C. Code § 22-3508 (1967).

On July 26, 1968, after a hearing in the Court of General Sessions pursuant to D.C. Code § 22-3508, appellant was determined to be a "sexual psychopath" as defined in D.C. Code § 22-3503(1). Before the Court committed appellant to Saint Elizabeths Hospital, however, counsel for appellant and two psychiatrists from D. C. General Hospital suggested an available, alternative course of treatment "that would fulfill [appellant's] special needs . . . ." [1/] The psychiatrists suggested that instead of committing appellant

---

[1/] Transcript of the hearing in the Court of General Sessions, July 26, 1968, at 4.

to Saint Elizabeths Hospital he should be referred to out-patient, psychopathic therapy and be placed on proper medication to relieve his tensions. [2] Although a definite plan that could have been implemented was proposed, [3] the Court felt compelled to commit appellant to Saint Elizabeths Hospital. [4]

Appellant then petitioned the United States District Court for the District of Columbia for a writ of habeas corpus to test the legality of his confinement at Saint Elizabeths Hospital. After a hearing on appellant's petition for a writ of habeas corpus, [5] the District Court discharged its rule to show cause and dismissed appellant's petition. [6]

2/ Id. at 5-6.

3/ Supra n. 1 at 7-9.

4/ Supra n. 1 at 11.

5/ Transcript of the hearing in the United States District Court for the District of Columbia, September 9, 1963.

6/ "Findings of Fact, Conclusions of Law and Order," Habeas Corpus No. 176-68, September 10, 1968.

This appeal followed.

SUMMARY OF THE ARGUMENT

Appellant contends that although D.C. Code § 22-3503 (1967) provides that "[i]f the patient is determined to be a sexual psychopath, the court shall commit him to Saint Elizabeths Hospital . . .", it is a denial of equal protection of the laws if the court does not first explore alternative courses of treatment. Fuller v. United States, ___ U.S. App. D.C. ___, 390 F.2d 463 (1967) (Bazelon, C.J., concurring); see Baxstrom v. Herold, 383 U.S. 107 (1966); Rouse v. Cameron, 125 U.S. App. D.C. 366, 373 F.2d 451 (1967); Cameron v. Mullen, 123 U.S. App. D.C. 235, 337 F.2d 193 (1967).

Proceedings under the sexual psychopath law are essentially equivalent to civil commitment proceedings. Millard v. Cameron, 125 U.S. App. D.C. 383, 373 F.2d 468 (1966); Miller v. Overholser, 92 U.S. App. D.C. 110, 206 F.2d 415 (1953). Therefore, since alternative courses of treatment must be explored in civil commitment

proceedings under the Hospitalization of the Mentally Ill Act, Lake v. Cameron, 124 U.S. App. D.C. 264, 267-68, 364 F.2d 657, 660-61 (1966), it may not be assumed that Congress intended to withhold such consideration from persons committed as "sexual psychopaths." Compare D.C. Code § 22-3503(1) with D.C. Code § 21-545(b).

ARGUMENT

I. PROCEEDINGS UNDER THE SEXUAL PSYCHOPATH LAW ARE ESSENTIALLY EQUIVALENT TO CIVIL COMMITMENT PROCEEDINGS.

An intent of Congress in enacting the District of Columbia sexual psychopath law [7/] was to provide the proper treatment for those persons who evidenced such lack of power to control their sexual impulses as to be dangerous to others. In comparing the various state sexual psychopath statutes in existence at the time of

---

[7/] 62 Stat. 347, D.C. Code §§ 22-3501 through 22-3511 (1967).

the enactment of the District of Columbia law, Congress noted the need of the sexual psychopath for treatment similar to that afforded insane persons:

> . . . Although the statutes vary somewhat in their details, they are all alike in their purpose to provide for the commitment and treatment of sexual psychopaths in a manner similar to the treatment afforded insane persons. S.Rep. No. 1377, 80th Cong., 2d Sess. 5 (1943).

The intent of Congress is also apparent from a reading of the sexual psychopath law with the Hospitalization of the Mentally Ill Act that was enacted in 1964. In requiring a finding of dangerousness as a prerequisite to commitment under both Acts, Congress intended that persons considered under these Acts should be treated similarly. 8/

8/ Compare D.C. Code § 22-3503(1) with D.C. Code § 21-545(b); see Fuller v. United States, ___ U.S. App. D.C. ___, 390 F.2d 468 (1967) where the Court seemed to be relying on this manifested Congressional intent when it said:

> . . . We do not preclude consideration of any disposition not specifically mentioned by us which should occur to the court or be brought to the court's attention by counsel. 390 F.2d at 470.

In 1953 this Court first held that proceedings under the Sexual Psychopath Law were civil proceedings. [9] In Miller v. Overholser the Court said:

> . . . We agree with those courts, including our own District Court in Malone v. Overholser, which have held proceedings under similar statutes and under this statute to be civil proceedings. 206 F.2d at 417.

After the enactment of the Hospitalization of the Mentally Ill Act, this Court in Millard v. Cameron, 125 U.S. App. D.C. 383, 373 F.2d 468 (1966), held that a sexual psychopath was "entitled to psychiatric care and treatment under the 1964 Hospitalization of the Mentally Ill Act" [10] even though under D.C. Code § 22-3503(1) of the sexual psychopath law he is defined as "a person, not insane." [11]

---

[9] Miller v. Overholser, 92 U.S. App. D.C. 110, 206 F.2d 415 (1953).

[10] 373 F.2d at 473.

[11] Id.

These decisions indicate that the lower courts' efforts should be directed toward fashioning the proper treatment for the patient whether he be a sexual psychopath or someone committed under the Hospitalization of the Mentally Ill Act.

II. SINCE ALTERNATIVE COURSES OF TREATMENT MUST BE EXPLORED IN CIVIL COMMITMENT PROCEEDINGS, IT MAY NOT BE ASSUMED THAT CONGRESS INTENDED TO WITHHOLD SUCH CONSIDERATION FROM PERSONS COMMITTED AS "SEXUAL PSYCHOPATHS".

In Lake v. Cameron, 124 U.S. App. D.C. 264, 364 F.2d 657 (1966), this Court held that alternative courses of treatment must be explored in civil commitment proceedings under the Hospitalization of the Mentally Ill Act. The Court emphasized that:

> . . . The alternative course of treatment or care should be fashioned as the interests of the person and of the public require in the particular case. Deprivations of liberty solely because of dangers to the ill persons themselves should not go beyond what is necessary for their protection. 364 F.2d at 660.

In light of this decision and the Court's holding in Millard v. Cameron, supra, that a sexual psychopath is entitled to psychiatric care and treatment under the 1964 Hospitalization of the Mentally Ill Act, it must be assumed that a sexual psychopath is also entitled to have alternative courses of treatment explored before he is committed to Saint Elizabeths Hospital under D.C. Code § 22-3508.

III. APPELLANT WAS DENIED EQUAL PROTECTION OF THE LAWS BY THE COURT'S FAILURE TO EXPLORE ALTERNATIVE COURSES OF TREATMENT BEFORE COMMITTING HIM TO SAINT ELIZABETHS HOSPITAL.

Appellant's case is like Lake v. Cameron, supra, except that instead of being a forgetful old lady, appellant is a 35-year-old, non-assaultive sexual psychopath, 12/ who has already spent fifteen years of

---

12/ Transcript of the hearing in the Court of General Sessions, July 26, 1968, at 2.

his life at Saint Elizabeths Hospital. 13/ Unlike Mrs. Lake, however, appellant did propose available, alternative courses of treatment to the court before he was committed to Saint Elizabeths Hospital. 14/

In failing to explore the alternative courses of treatment, the court denied appellant equal protection of the laws. Fuller v. United States, ___ U.S. App. D.C. ___, 390 F.2d 463 (1967) (Bazelon, C.J., concurring); see Baxstrom v. Herold, 383 U.S. 107 (1966); Rouse v. Cameron, 125 U.S. App. D.C. 366, 367-71, 373 F.2d 451, 452-56 (1967); Cameron v. Mullen, 128 U.S. App. D.C. 235, 241-44, 387 F.2d 193, 199-202 (1967).

13/ Id. at 6. Appellant's fifteen years in Saint Elizabeths Hospital was being discussed when Dr. Boschulte and the Court said:

> Dr. Boschulte: . . . Now, the letter in its ambiguity, I would like to say, is our way of expressing that it is our feeling that a lot has been invested in his treatment --
>
> The Court: Fifteen years is a lot.

14/ Supra n. 12 at 5-9.

In Fuller v. United States, supra, Chief Judge Bazelon in his concurring opinion said:

> . . . I think the District Court may resort to absolute confinement in Saint Elizabeths Hospital, whether under the sexual psychopath law or the Hospitalization of the Mentally Ill Act, only after it has determined that no satisfactory alternative exists. 390 F.2d at 471. [Emphasis added.]

Certainly here in appellant's case a satisfactory alternative to absolute confinement in Saint Elizabeths Hospital did exist and was proposed to the court by counsel and two psychiatrists. The court should have implemented the proposed alternative despite the mandatory language of D.C. Code § 22-3503. In failing to do so, the court denied appellant equal protection of the laws.

CONCLUSION

For the foregoing reasons, this case should be remanded for an inquiry into alternative courses of

treatment for appellant.

Respectfully submitted,

Edwin A. Williams
Legal Aid Agency
601 Indiana Avenue, N.W.
Washington, D. C. 20004
Counsel for Appellant
Appointed by this Court

ADDENDUM

D.C. Code § 21-545. Hearing and determination by court or jury; order; witnesses; jurors

* * *

(b) If the court or jury, as the case may be, finds that the person is not mentally ill, the court shall dismiss the petition and order his release. If the court or jury finds that the person is mentally ill and, because of that illness, is likely to injure himself or other person is allowed to remain at liberty, the court may order his hospitalization for an indeterminate period, or order any other alternative course of treatment which the court believes will be in the best interests of the person or of the public. The Commission, or a member thereof, shall be competent and compellable witnesses at a hearing or jury trial held pursuant to this chapter. The jury to be used in any case where a jury trial is demanded under this chapter shall be impaneled, upon order of the court, from the jurors in attendance upon other branches of the court, who shall perform the services in addition to and as part of their duties in the court. (Sept. 14, 1965, 79 Stat. 756, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

D.C. Code § 22-3503. Definitions.

For the purposes of sections 22-3503 to 22-3511 --

(1) The term "sexual psychopath" means a person, not insane, who by a course of repeated misconduct in sexual matters has evidenced such lack of power to control his sexual impulses as to be dangerous

to other persons because he is likely to attack or otherwise inflict injury, loss, pain, or other evil on the objects of his desire.

D.C. Code § 22-3503. Hearing--Commitment to Saint Elizabeths Hospital.

Upon the evidence introduced at a hearing held for that purpose, the court shall determine whether or not the patient is a sexual psychopath. Such hearing shall be conducted without a jury unless, before such hearing and within fifteen days after the date on which the second report is filed pursuant to section 22-3506, a jury is demanded by the patient or by the officer filing the statement. The rules of evidence applicable in judicial proceedings in the court shall be applicable to hearings pursuant to this section; but, notwithstanding any such rule, evidence of conviction of any number of crimes the commission of which tends to show that the patient is a sexual psychopath and of the punishment inflicted therefor shall be admissible at any such hearing. The patient shall be entitled to an appeal as in other cases. If the patient is determined to be a sexual psychopath, the court shall commit him to Saint Elizabeths Hospital to be confined there until released in accordance with section 22-3509. (June 9, 1948, 62 Stat. 349, ch. 428, title II, § 206.)